

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 13.36 OF THE SAN JOSE MUNICIPAL CODE TO REQUIRE CONSTRUCTION IMPACT MITIGATION PLANS ON MAJOR CONSTRUCTION PROJECTS

WHEREAS, Construction Impact Mitigation Plans (CIMPs) are intended to reduce the impacts on residents and businesses from major construction projects;

WHEREAS, CIMPs could add substantial costs and time to construction, so should be applied judiciously;

WHEREAS, the elements of CIMPs should be flexible to allow for individual project circumstances and continuing refinement as the construction project is implemented;

WHEREAS, on _____, this Ordinance was found to be categorically exempt from environmental review per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970, as amended, under File No. PP _____;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE AS FOLLOWS:

SECTION 1. Section 13.36.010 of Chapter 13.36 of Title 13 of the San José Municipal Code is hereby amended to read in its entirety as follows:

“13.36.010 Authority

- A. No person shall undertake construction or reconstruction within or affecting the City’s existing or proposed public rights of way without first obtaining a permit from the City pursuant to this Chapter or Chapter 15.50 et seq. as applicable.
- B. Subject to the provisions of Sections 13.36.100 through 13.36.120, related to Major Construction Projects, the Director of Public Works may approve plans for construction or reconstruction, not including maintenance, within existing and proposed public rights-of-way, and when the cost to the City is not more than five

DRAFT

thousand dollars (\$5,000), may approve agreements and issue permits for said work.”

SECTION 2. Chapter 13.36 of Title 13 of the San José Municipal Code is amended to adding a Part, to be numbered, entitled and to read in its entirety as follows:

“Part 2 Construction Impact Mitigation Plans

13.36.100 Construction Impact Mitigation Plan - Purpose

- A. The purpose of this Part is to help transition residents and businesses through the temporary disruption of major construction projects by requiring the owners of such projects to communicate with the surrounding neighbors prior to, and throughout the construction period, in an attempt to avoid or lessen potential impacts arising from the construction.
- B. The provisions of this Part are in addition to, and shall not replace, supercede, or be interpreted to comply with the California Environmental Quality Act, or any other provision of state or federal law, except that as provided in Section 13.36.120, the Construction Impact Mitigation Plan may incorporate by reference the analysis of any impacts identified in any document prepared for the project pursuant to the California Environmental Quality Act.
- C. Except as contained in an approved Plan, nothing in this Part shall be construed as requiring anyone to pay compensation to businesses or residents for damages which are otherwise not recoverable under state or federal law.

13.36.110 Construction Impact Mitigation Plan-Requirement

- A. Except as provided in subsection B below, any person required to obtain a permit from the Director of Public Works pursuant to Section 13.36.010 of this Chapter, for a Major Construction Project as defined in Section 13.36.140 of this Chapter, shall be required as a condition to the permit to submit to the Director of Public Works for approval, a Construction Impact Mitigation Plan.
- B. Notwithstanding subsection A, if any person commences a Major Construction Project pursuant to a Cooperation Agreement with the City, the terms of which

DRAFT

require a CIMP, the terms of such Cooperation Agreement shall control over the terms of this Ordinance.

13.36.120 Construction Impact Mitigation Plan-Contents

A Construction Impact Mitigation Plan submitted pursuant to this Chapter shall contain all of the following elements:

- A. A detailed project description, including site maps and a phasing schedule depicting the proposed location and timing of construction activity on a month-by-month basis for the duration of the project.
- B. A detailed analysis of the potential physical, environmental and other impacts of the construction activities on residents and businesses within a five hundred (500) foot radius of the project. The Construction Impact Mitigation Plan may incorporate by reference the analysis of any impacts identified in any document prepared for the project pursuant to the California Environmental Quality Act.
- C. A detailed description of the mitigation measures proposed to be undertaken by the contractor or the project owner to reasonably mitigate each of the impacts identified to the extent practicable. The Construction Impact Mitigation Plan may incorporate by reference the mitigations of any impacts proposed in any document prepared for the project pursuant to the California Environmental Quality Act.
- D. A detailed Communications Plan specifying the steps that will be taken by the contractor and the project owner during the course of construction of the project to alleviate the identified impacts, which shall include, but not be limited to the following:
 - 1. A schedule of regular meetings with the surrounding businesses and residents throughout the course of construction;
 - 2. A display of maps and construction schedule information posted in and around the construction area;
 - 3. A schedule of meetings with the surrounding businesses and residents, emphasizing the market area of the impacted businesses;

DRAFT

4. A schedule of regular meetings to coordinate with any other construction project within 500 feet of the project;
5. The designation of a community outreach coordinator available on-site for the duration of the construction project.

13.36.130 Potential Impacts to Businesses

- A. The potential impacts required to be analyzed pursuant to Section 13.36.120.B shall include the following impacts on businesses within a 500-foot radius of the Project that shall be addressed in the Construction Impact Mitigation Plan, if applicable:
 1. Reduced patronage due to impediments to access, visual impediments to signage; loss of on-street parking, or perceived safety issues;
 2. Forced temporary business closure due to loss of utilities, loss of access for patrons and employees, loss of access for services such as deliveries or garbage service, or perceived safety issues;
 3. Forced permanent business closure due to permanent loss of access.
- B. Potential mitigation measure to alleviate such impacts on businesses may include, but not be limited to:
 1. Limits on hours of construction;
 2. Provision of alternative access routes;
 3. Outreach to business to schedule utility outages,
 4. Increased signage to provide visibility, notice of alternative parking, notice of alternative access;
 5. Marketing assistance, technical business support, and cross-promotion efforts with adjacent businesses

DRAFT

13.36.140 Major Construction Project- Defined

For the purposes of this Chapter, a Major Construction Project is one in which the encroachment permit application indicates that, for a period of at least twelve (12) months, at least one of the following conditions will exist:

- A. The project will impact two (2) or more signalized intersections;
- B. Sidewalk access will be precluded for the length of a block; or
- C. The project is located within the lesser of 500 feet or one block of another project located in the right of way.”

SECTION 3. Chapter 13.36 of Title 13 of the San José Municipal Code is hereby amended by adding a Part, to be numbered, entitled and to read in its entirety as follows:

“Part 3 DENIAL, AMENDMENT OR REVOCATION

13.36.200 Denial.

The Director may deny a permit application if the Director makes any of the following determinations:

- A. The application is incomplete; or
- B. The Construction Impact Mitigation Plan, if required by this Chapter, fails to address any project impact in the manner and/or to the standard required by this Chapter; or
- C. The application if granted would jeopardize or create harm to public health and safety.

13.36.210 Amendment or revocation.

The Director may, in writing, amend or revoke a permit if the Director finds any of the following conditions have occurred:

- A. The permit was issued in error or on the basis of incorrect or incomplete information supplied;

DRAFT

- B. The permittee has violated any conditions of the permit; or
- C. The construction activities in the right of way create a dangerous condition to life or property.

13.36.220 Appeal of permit denial, revocation or amendment.

- A. The Director shall notify an applicant, in writing, of the Director's decision to deny, amend or revoke a permit.
- B. The notice of decision shall state the grounds for denial of the application or amendment or revocation of the permit and shall notify the applicant or permittee of the hearing opportunity pursuant to Section 13.36.220.
- C. The notice of decision shall become final, unless a written request for hearing is received within ten business days after the date of notice of decision.

13.36.230 Hearing.

- A. Upon receipt of a timely written request for a hearing on a notice of decision to deny an application for permit or to amend or revoke a permit, the director shall schedule a hearing. The Director shall notify the applicant or permittee of the hearing date, time and location.
- B. The hearing with the Director shall be held within thirty (30) days after receipt of the request for hearing.
- C. At the hearing, the permittee or applicant may present any relevant evidence. The hearing will be conducted informally and the technical rules of evidence shall not apply. The permittee or applicant may be represented by any person.
- D. After closing the hearing, the Director shall render a decision sustaining, reversing or modifying the decision to deny, amend or revoke the permit. A written notice of final decision shall be hand-delivered or sent by mail to the permittee or applicant.
- E. The decision of the Director may be appealed to the City Council whose decision on the matter shall be final.

RD:PAD/VMT
7/24/03

DRAFT

PASSED FOR PUBLICATION of title this _____ day of _____, 2003, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

RON GONZALES
Mayor

ATTEST:

PATRICIA L. O' HEARN
City Clerk